



Attorney Docket No. OMG/129/US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hubert T. McGovern and Thomas P. Druschel

Serial No.: 09/923,288

Examiner: Jori Schiffman

Filing Date: August 6, 2001

Group Art Unit: 3679

For: DECK SCREWS SUITABLE FOR USE WITH COMPOSITE LUMBER

Mail Stop: Petitions
Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

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Sir:

PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT

AND

**STATEMENT OF FACTS IN SUPPORT OF PETITION TO MAKE SPECIAL
BECAUSE OF ACTUAL INFRINGEMENT (MPEP §708.02)**

Applicants herein petition that application 09/923,288 be made special on the basis of actual infringement. Applicants also include with this paper a statement of facts in support of the petition and the fee under 37 CFR §1.17(h) of \$130.00.

Basis For Petition

MPEP §708.02 states that:

Subject to a requirement for a further showing as may be necessitated by the facts of a particular case, an application may be made special because of actual infringement (but not for prospective infringement) upon payment of the fee under 37 CFR 1.17(i) and the filing of a petition accompanied by a

statement by the applicant, assignee, or an attorney/agent registered to practice before the PTO alleging:

(A) That there is an infringing device or product actually on the market or method in use;

(B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

STATEMENTS OF FACT SUPPORTING THE PETITION

Infringing Device Actually Being Sold

Presently, there are at least two products (see Exhibit A) being marketed, distributed, offered for sale and sold which infringe claims to the present invention. The first product is the "Trufast" screw which has been sold since, at least, the February 2004 International Building Show held in Las Vegas Nevada. The second product is the "SureDrive" screw sold by Sure Drive USA Inc., 1361 Lowrie Avenue South, San Francisco, CA 94080, a division of The Marmon Group, 225 W. Washington Street, Chicago, Illinois 60606, since at least December 2003. Enclosed with this paper are labeled copies of the "Trufast" and "SureDrive" screws.

Comparison Of The "Trufast" and "SureDrive" Screws

Based on a rigid comparison of the "Trufast" and "SureDrive" screws, it is the undersigned's opinion that at least one claim of the present application is unquestionably infringed. For example, the "Trufast" and "SureDrive" screws clearly are for securing wood products, comprised of: a shaft and a head, wherein the head is provided with a top surface having an opening to receive a tool; wherein the shaft is provided with a substantially cylindrical threaded upper

region located proximate the head and a substantially cylindrical threaded lower region located near a distal end of the screw, the distal end having a tip, wherein there are at least twice as many threads per unit length in the upper region as there are threads per unit length in the lower region, said shaft having a cross-sectional area along the cylindrical upper region greater than the cross-sectional area of the shaft along the cylindrical lower region.

Prior Art Statement

Applicants include with this paper a Statement by co-inventor, Hubert T. McGovern, that he has a good knowledge of the pertinent prior art.


FEES UNDER 37 C.F.R., §1.17(h)

Applicants herein enclose a check in the amount of \$130.00 as specified in 37 C.F.R., §1.17(h).

In summary, Applicants hereby request that this Petition To Make Special Because Of Actual Infringement be granted in the present application.

Respectfully submitted,

Hubert T. Mc Govern et al.

By: 
Guy D. Yale
Registration No. 29,125
Alix, Yale & Ristes, LLP
Attorney for Applicants

Date: April 9, 2004
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TAH/GDY/db
Enclosure

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Sir:

STATEMENT OF HUBERT T. MCGOVERN WITH REGARD TO
GOOD KNOWLEDGE OF PERTINENT PRIOR ART

I, HUBERT T. MCGOVERN, hereby declare and state that:

1. I am Vice President and General Manager of Olympic Manufacturing Group, Inc., ("OMG"), 153 Bowles Road, Agawam, Massachusetts 01001-0508, assignee of the above-captioned application, and a company which is primarily dedicated to the manufacture and marketing of high-quality fastener components and accessories to the construction and roofing industry. I am also an inventor of record with respect to the above-captioned application.

2. I am a graduate of Syracuse University with a Bachelor of Science degree in Engineering and have a Master's degree in Engineering from the University of Massachusetts.

3. I have been employed at OMG for over 18 years and have actively participated in the fastener industry. My responsibilities and experience have included the design, planning, development, production, and marketing of new fastening products.

I have attended and participated in numerous tradeshow and demonstrations where fasteners, hardware, components, and accessories are displayed, exhibited, and promoted to the major participants in the fastener industry including, but not limited to, tradesmen, contractors, manufacturers, wholesalers, and retailers.

4. I have been employed at OMG as an engineer and as an executive with management responsibilities. As a further part of my management responsibilities, I have analyzed markets within the fastener industry to identify those markets into which OMG can likely expand.

5. For over 20 years, OMG has been involved in the design, testing, development, manufacturing, marketing, and distribution of high-quality fasteners and accessories.

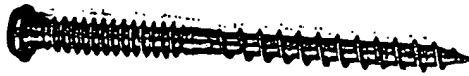
6. As an engineer, Vice President and General Manager of OMG, I have extensive knowledge and experience with regard to fasteners, associated accessories, and the markets pertaining to such products and accessories. I believe that based on my knowledge and my experience with regard to, at least, the above mentioned design, planning, development, manufacture, and marketing, as well as my attendance and active participation at major industry trade shows and demonstrations, and based on my knowledge of fasteners through my interactions with contractors, wholesalers, and retailers, I have ample qualifications to render an objective, credible and reliable opinion that I have good knowledge of the pertinent prior art in the above captioned application.

Respectfully submitted,

By: Hubert T. McGovern
Hubert T. McGovern

Date: April 5, 2004

Exhibit A



**SureDrive / Scorpion Screw
Purchased in Westfield, Mass
in December 2003**



**Trufast Screw
Collected at the Intl Bldg Show
in Las Vegas in February 2004**



Atty. Docket: OMG/129/US

In re patent application of first named inventor: Hubert T. McGovern et al

Application No.: 09/923,288

Examiner: Jori Schiffman

Filing Date: August 6, 2001

Group Art Unit: 3679

For: DECK SCREWS SUITABLE FOR USE WITH COMPOSITE LUMBER

TRANSMITTAL LETTER

Mail Stop: PETITIONS, Commissioner for Patents

United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450

Sir, enclosed herewith is (are):

- Petition To Make Special Because Of Actual Infringement AND Statement Of Facts In Support Of Petition To Make Special Because Of Actual Infringement (MPEP §708.02)
- Statement Of Hubert T. McGovern With Regard To Good Knowledge Of Pertinent Prior Art
- Check in the Amount of **\$130.00** (Petition Fee - 37 C.F.R. §1.17(h))
- Return postcard

It is hereby petitioned that any required extension of time be granted for filing the enclosed papers. An extension of 0 month(s) having a fee of \$0 appears required.

☒ If checked, a check in the amount of \$130.00 is attached. Please credit any overpayment to Deposit Account 16-2563 of Alix, Yale & Ristas, LLP.

The Commissioner is hereby requested and authorized to charge Deposit Account 16-2563 of Alix, Yale & Ristas, LLP for any required extension fee and for any other fee, not enclosed herewith, due for any reason during the pendency of this application or in connection with the accompanying document, including (a) any filing fees under 37 CFR 1.16 for the presentation of extra claims and (b) any patent application processing fees under 37 CFR 1.17. A duplicate copy of this letter is enclosed.

Date: April 9, 2004
Alix, Yale & Ristas, LLP
750 Main Street- Suite 1400
Hartford, CT 06103-2721
(860) 527-9211

By: [Signature]
Guy D. Yale
Registration No. 29,125
Attorney for Applicant

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The above signatory certifies that this correspondence is being deposited on the date given above with the United States Postal Service as First Class Mail in an envelope addressed to "Mail Stop Petitions, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450".

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